

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LEROY S. OLNEY, Pro Se,
Petitioner

v.

CA No. 03-181-T

A.T. WALL, Director of Department
of Corrections, Rhode Island,
Respondent

**MEMORANDUM AND ORDER GRANTING MOTION FOR PRODUCTION OF
TRANSCRIPTS AT GOVERNMENT EXPENSE AND DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY**

ERNEST C. TORRES, Chief Judge.

Leroy Olney filed a § 2254 petition to vacate his state court sentence for murder and robbery. After a hearing, a magistrate judge recommended denial of the petition and this Court accepted that recommendation.

On March 10, 2004, Olney filed a Notice of Appeal and, on March 26, 2004, he filed a Motion for Leave to Appeal In Forma Pauperis. On April 2, 2004, the Court of Appeals entered an order granting the motion to appeal in forma pauperis.

This Court, being unaware of the April 2 order, denied Olney's Motion for Leave to Appeal In Forma Pauperis on April 15, 2004. That motion was denied for two reasons.

First, this Court found that Olney had "not made a substantial showing of the denial of a constitutional right," which is a prerequisite for appealing from the denial of a § 2254 petition. 28 U.S.C. 2253(c)(1). This Court reasoned that, since Olney was not entitled to appeal at all, he was not entitled to appeal in forma pauperis.

In addition, this Court noted that Olney had failed to file any information regarding his prison trust account as required by 28 U.S.C. § 1915(a)(2); and, therefore, no determination could be made regarding his ability to pay the cost of an appeal.

On May 11, 2004, Olney filed a motion for production of transcripts of a September 9, 2003 telephone conference with the magistrate judge and the hearing on his § 2254 motion before the magistrate judge. On May 25, 2004, this Court denied that motion without prejudice to renewal if Olney was successful on any appeal from the denial of his previous motions.

Olney, now, has filed a second motion for production of the transcripts as well as a motion for a certificate of appealability from the denial of his § 2255 petition.

Since this Court previously found that Olney had failed to make a "substantial showing of the denial of a constitutional right," his motion for a certificate of appealability is denied. Nevertheless, as incongruous as it may be, since the Court of Appeals granted Olney's motion to appeal in forma pauperis, his

Motion for Production of Transcripts at Government Expense is granted.

IT IS SO ORDERED,

Ernest C. Torres, Chief Judge
Date: January , 2005